HON'BLE SRI JUSTICE P.S.NARAYANA

+ WRIT PETITION No.15502 of 2006

% Dated 29-10-2007

Between:
Estate Officer and Additional Divisional Railway
Manager, South Central Railway, Vijayawada,
Krishna District

…. Petitioner

And
Yerraguntala Lakshmisundaram and another

… Respondents

! Counsel for the Petitioner: Sri P.GANGARAMI REDDY

^Counsel for Respondents: Sri N.V.ANANTHA KRISHNA

<GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.15502 of 2006

Between:
Estate Officer and Additional Divisional Railway
Manager, South Central Railway, Vijayawada,
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..... PETITIONER

AND
Yerraguntala Lakshmisundaram and another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.15502 of 2006

ORDER:

This Court issued rule nisi on 27.07.2006.

2. Heard Sri Gangarami Reddy, the learned counsel, representing the petitioner and Sri Anantha Krishna, the learned counsel, representing the respondent.

3. The writ petition is filed by the petitioner for issuance of a writ of certiorari or any other appropriate writ or direction calling for the records relating to the judgment and decree in A.S.No.212 of 2002 dated 22.12.2005 on the file of the Principal District Judge, Rajahmundry, East Godavari and to quash the same and to pass other suitable orders.

4. It is stated that the respondents are in unauthorized occupation of 98 sq.meters of land. The petitioner Railways issued notice under Section 4 (1) of the Public Premises (Eviction of unauthorized occupants) Act (hereinafter referred to as "the Act" for the purpose of convenience) to the respondent. After considering the explanation submitted by the respondent the petitioner ordered eviction from the Railway land. Assailing the said order, the

respondents preferred an appeal A.S.No.212 of 2002 to the Appellate Authority under Sec.9 (1) of the Act. The Appellate Authority on an erroneous view of law and facts allowed the appeal by setting aside the order of the petitioner giving liberty to railway administration to file civil suit with regard to the same subject.

5. Further it is stated that the land in occupation of respondents is Railway land. The occupation of the respondents of the Railway land is unauthorized one and they are liable to be evicted under the provisions of the Act. Accordingly, the petitioner issued notice and ordered eviction. The order of the Appellate Authority in setting aside the order of the petitioner is not legal and valid.

6. It is further stated that the order passed by the petitioner does not contain any reason and had not considered the objections of the respondents the Appellate Authority could have either considered the oral and documentary evidence on record and disposed of the appeal on merits or remanded the matter to the petitioner for fresh consideration. The Appellate Authority having held that the petitioner had not considered the objections of the respondent and not assigned any reason ought to have remanded to the matter to the petitioner for fresh consideration. The order of the Appellate Authority in setting aside the eviction order without remanding the matter to petitioner is illegal and unsustainable.

7. It is further stated that Sec.15 of the Act bars jurisdiction of Civil Court in respect of eviction of any person who is in unauthorized occupation of public premises. The property, which is in occupation of respondents, belongs to South Central Railway within the definition of public premises. As there is a bar to approach the Civil Court the Railway Administration has no other alternative to evict the unauthorized occupants except by invoking the provisions of the Act.

The direction issued by the Appellate Authority to approach Civil Court is contrary to Sec.15 of the said Act and illegal.

8. Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 reads as under:

"No Court shall have jurisdiction to entertain any suit or proceeding in respect of:--

(a) the eviction of any person who is in unauthorized occupation of any public premises, or;
(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Sec.5A, or;
(c) the demolition of any building or other structure made, or ordered to be made, under Sec.5B;

or

[(cc) the sealing of any erection or work or of any public premises under Sec.5C, or]

(d) the arrears of rent payable under Sub-Sec.(i) of Sec.7 or damages payable under Sub-Sec.(2), or interest payable under Sub-Sec.(2A); of that section, or
(e) the recovery of :--

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Sec.5A, or
(ii) expenses of demolition under Sec.5B, or
(iii) costs awarded to the Central Government or statutory authority under Sub-Sec.(5) of Sec.9, or
(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority;

9. The learned Principal District Judge, East Godavari at Rajahmundry at paragraph-7 observed as under:

> "In the result, the appeal is allowed setting aside the impugned order passed by the Estate Officer and Additional Divisional Railway Manager, South Central Railway, Vijayawada, but giving liberty to the respondent and the Railway Administration to file civil suit with regard to the same subject. No costs."

10. As rightly argued by the learned counsel for the petitioner,

Sec.15 of the Public Premises (Eviction of unauthorized occupants) Act bars the jurisdiction of Civil Court in respect of eviction of any person who is in unauthorized occupation of the public premises. Therefore, the observations and findings made by the Court below in respect of giving liberty to the respondents and the Railway Administration to file a civil suit is unsustainable and the same is hereby set aside. However, with regard to allowing the appeal by the Court below is not interfered with and let the Estate Officer decide the matter afresh, in accordance with law, after giving due opportunity to the parties.

11. With the above observations, the writ petition is disposed of. No costs.

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P.S.NARAYANA,J

Dated:29.10.2007
Dsr

Note:
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